

The decision rendered by the Administrative Law Judge granting the vocational examination is in the nature of an interlocutory order. After examining both K.S.A. 44-551 and K.S.A. 44-534a, the Appeals Board finds that the subject order of July 14, 1994, is not

a final order which can be reviewed by the Appeals Board pursuant to either statute. While the decision of the Administrative Law Judge might be considered a preliminary order, it is not one wherein the Administrative Law Judge has exceeded his jurisdiction and it is not one of the issues deemed jurisdictional by K.S.A. 44-534a whereby the Appeals Board is granted the right to review at this time.

Claimant's argument is correct that unlike the situation when ordering a claimant to submit to a medical examination under K.S.A. 44-515, there is no corresponding statutory authority concerning submitting to an examination by a vocational expert. Nevertheless, we do not agree that the Administrative Law Judge is without authority to make such an order. Claimant is making a claim for work disability and/or permanent total disability. Accordingly, the issue of claimant's ability to access the open labor market and earn a wage have been placed in issue by the claimant and are relevant areas of inquiry in this proceeding. The record reflects that claimant has retained a vocational expert of her own in this regard and his opinions have been placed in evidence. The Appeals Board agrees with the reasoning of the Administrative Law Judge that he is given the authority and mandate by K.S.A. 44-523(a) not to be bound by technical rules of procedure but to give the parties reasonable opportunities to be heard and to present evidence, to ensure an employee an expeditious hearing and to act reasonable without partiality. To permit one party the opportunity to interview the claimant and conduct such testing as may be reasonably necessary for an expert to form opinions concerning issues relevant to a determination of work disability, but to deny such an opportunity to the other party, would not be reasonable nor impartial. The Appeals Board finds the Administrative Law Judge did not exceed his authority in making his Order of July 14, 1994, and accordingly, the Appeals Board does not have jurisdiction to review this matter at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed. The Preliminary Order of Administrative Law Judge James R. Ward dated July 14, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Frank D. Taff, Topeka, KS
Larry G. Karns, Topeka, KS
Michael J. Unrein, Topeka, KS
James R. Ward, Administrative Law Judge
George Gomez, Director